

(PCT Article 36 and Rule 70)

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/009122

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
- ☐ publication of the international application (Rule 12.4)
- ☐ international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the **elements** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
- ☐ the international application as originally filed/furnished
- ☒ the description:
- pages 1-45 _____ as originally filed/furnished
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☒ the claims:
- nos. 1-33 _____ as originally filed/furnished
- nos.* _____ as amended (together with any statement) under Article 19
- nos.* _____ received by this Authority on _____
- nos.* _____ received by this Authority on _____
- ☐ the drawings:
- sheets _____ as originally filed/furnished
- sheets* _____ received by this Authority on _____
- sheets* _____ received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages _____
- ☐ the claims, nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1. Statement			
Novelty (N)	Claims	<u>1-33</u>	YES
	Claims	<u></u>	NO
Inventive step (IS)	Claims	<u></u>	YES
	Claims	<u>1-33</u>	NO
Industrial applicability (IA)	Claims	<u>1-33</u>	YES
	Claims	<u></u>	NO
2. Citations and explanations (Rule 70.7)			
<p>1. The product as per claim 1 differs from the closest prior art (WO 99/14187 A1 (D1), in particular preparation IX) by the specific ratio by weight between the alkoxyated alcohol (b1) and the benzamidoxime derivative (a1): the oily dispersion IX of D1 contains 20 parts benzamidoxime for 8 parts of a fatty alcohol polyglycol ether which falls under the broadly defined formula (II) according to the present claim 5. The weight ratio of surfactant to benzamidoxime thus remains just below the claimed limit.</p> <p>EP 1 077 028 A1 (D2) also discloses polyethylene glycol ether, <i>inter alia</i>, as possible surfactant for benzamidoxime derivatives (D2: paragraph 20), but without giving a specific example or indicating a quantitative ratio.</p> <p>D1, D2 or the other international search report citations do not disclose a clear technical teaching on the use of an alkoxyated alcohol for improving the fungicidal effect of a benzamidoxime derivative of formula (I) (claim 31).</p>			

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	<p>The subject matter of claims 1-33 is thus novel (PCT Article 33(2)).</p> <p>2. The possible use of alkoxyated alcohols as surfactants for benzamidoxime derivatives is known (D1, D2).</p> <p>It is also known that these compounds can be advantageously used for improving leaf absorption and/or the efficacy of pesticides or fungicides: see, <i>inter alia</i>, JP 9 278 605 A (D3), WO 03/022048 A1 (D4: page 1, line 32 - page 2, line 18, in connection with the compounds in examples 1, 3, 5 and 6), WO 99/26472 A1 (D5: page 1, lines 25-27, and page 5, line 24 - page 7, line 9) and WO 02/15697 A2 (D6: page 1, lines 40-42; and page 3, line 16 - page 4, line 15).</p> <p>Alkoxyated alcohols constitute preferred surfactants for pesticide formulations, also for toxicological reasons (US 4 317 940 (D7)).</p> <p>The choice of these compounds for increasing the efficacy of benzamidoxime fungicides is thus obvious.</p> <p>The amounts used can be chosen in wide ranges, and a ratio of alkoxyated alcohol to fungicide of more than 0.5 is quite within the conventional range (see D4: page 5, line 29; D5: page 8, lines 25-28; D6: formulations A and B). It is not possible to determine from the examples according to the invention whether the chosen range - which does not specially deviate from the known range (D1: composition IX) - actually contributes to special</p>

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	<p>effects in comparison with the effects of the known composition. The weight ratio of alcohol to benzamidoxime thus appears to constitute an arbitrary, non-inventive selection.</p> <p>Insofar as the alkoxyated alcohols, as defined in claims 6-23, for example, differ from the alkoxyated alcohols known from D3-D6, they constitute obvious alternatives to these compounds.</p> <p>No clear synergistic effect of the claimed combinations with further fungicides (claims 26, 27) can be found in the examples.</p> <p>A kit (claim 30) represents a conventional configuration of a fungicide-adjuvant combination (D6: page 6, lines 17-24).</p> <p>The subject matter of claims 1-33 thus does not involve an inventive step (PCT Article 33(3)).</p>

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Box No. VI

Certain documents cited

1. Certain published documents (Rule 70.10)

Application No.
Patent No.Publication date
(day/month/year)Filing date
(day/month/year)Priority date (valid claim)
(day/month/year)

2. Non-written disclosures (Rule 70.9)

Kind of non-written disclosure

Date of non-written disclosure
(day/month/year)Date of written disclosure
referring to non-written disclosure
(day/month/year)